

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY G. CAUDLE

Appeal No. 2006-1481
Application No. 09/846,714

ON BRIEF

Before OWENS, NAPPI and FETTING, *Administrative Patent Judges.*

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

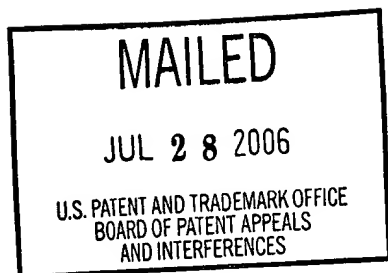
This appeal is from the final rejection of claim 50, which is the only claim pending in the application. Claims 1-49 and 51-55 were cancelled prior to appeal.

THE INVENTION

The appellant claims a single pouch comprising two heat sealed lateral edges, each of the two edges comprising a concave surface and a convex surface such that each edge is substantially S-shaped.

Claim 50:

A single pouch comprising a first lateral edge and a second lateral edge, each of the first and the second lateral edges comprising a concave surface and a convex



surface, wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge and the convex surface of the first lateral edge is substantially opposite the concave surface of the second lateral edge; wherein the first lateral edge and the second lateral edge each comprise a heat seal; and wherein both the first and the second lateral edges are substantially S-shaped.

THE REFERENCES

Campbell	GB 303,593	January 10, 1929
Hubbard	4,688,572	August 25, 1987

THE REJECTION

Claim 50 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Campbell (GB 303,593) in view of Hubbard (U.S. 4,688,572).

OPINION

We affirm the aforementioned rejection.

Campbell teaches hot water bottles, each bottle being formed by binding two shaped membranes along their peripheral edges (Page 2, lines 60-61) to form a unitary

pouch of the same shape for holding fluid but does not specifically teach the pouch wherein the peripheral edges are joined by heat sealing.

Hubbard teaches that it is known in the art of sealed pouches (e.g. bladders, thermal packs etc.) to form a pouch by heat sealing together two flat sheets along their outer peripheral edges (Col. 5 lines 55-60).

Examiner argues that it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated heat sealing as taught by Hubbard in the hot water bottles of Campbell given the teaching by Hubbard that such sealed edges provide "integral construction" (Col. 5 line 59) which would necessarily result in a leak proof, or at least leak resistant, peripheral seam (answer, page 4).

Appellant argues in the brief (page 10) that: (1) Campbell does not disclose lateral edges comprising heat seals thus precluding motivation to combine with Hubbard; and that (2) Campbell does not disclose substantially S-shaped edges to the degree claimed.

Appellant's argument that a lack of heat sealing in Campbell prevents combination with Hubbard is without merit. Obviousness-type rejection does not require that

the primary reference teach the element for which the secondary reference is relied upon. Thus, it is not necessary that Campbell teach heat seals in order to provide motivation for combining Campbell with Hubbard. Such a teaching in Campbell would only be required in order to maintain an anticipatory type rejection.

Appellant has not provided sufficient evidence to overcome examiner's reasonable determination of obviousness. The appellant's arguments are not persuasive because the desire for a leak-proof seam provides sufficient motivation for use of heat sealing as the means for binding the peripheral edge of the pouches of Campbell. One of ordinary skill in the art would have appreciated the integral construction provided by the known heat sealing method as taught by Hubbard.

Appellant's argument that Campbell does not teach substantially S-shaped edges to the degree claimed is not convincing. Inspection of Figure 2 of Campbell reveals a pouch (1) comprising first and second lateral edges (2) each comprising a concave surface and a convex surface such that each edge is substantially S-shaped.

Campbell Figure 2 is reproduced below:

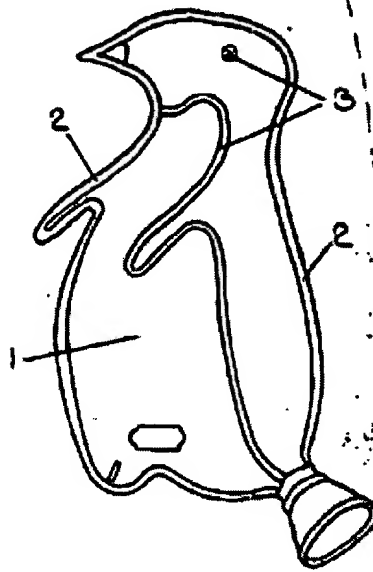


FIG. 2.

Campbell's Figure 2 is said to depict a hot water bottle, the peripheral edge thereof conforming to the silhouette of an animal.

Specifically, considering the left lateral edge of the pouch in Figure 2, the curved portion just above the section indicated by lead line 2 constitutes the "concave surface of the first lateral edge" while the curved portion just below the section indicated by lead line 2 constitutes the "convex surface of the first lateral edge".

Considering the right lateral edge of the pouch in Figure 2, the curved portion just above the section separated by lead lines from numeral 3 constitutes the "convex surface of the second lateral edge" while the curved portion just

below the section separated by lead lines from numeral 3 constitutes the "concave surface of the second lateral edge".

As required by claim 50, Figure 2 of Campbell illustrates the pouch wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge and wherein the convex surface of the first lateral edge is substantially opposite the concave surface of the second lateral edge. Furthermore, the left lateral edge comprising: the curved portion just above the section indicated by lead line 2; the section indicated by lead line 2; and the curved portion just below the section indicated by lead line 2, is substantially S-shaped. Likewise, the right lateral edge comprising: the curved portion just above the section separated by lead lines from numeral 3; the section separated by lead lines from numeral 3; and the curved portion just below the section separated by lead lines from numeral 3, is substantially S-shaped.

For the above reasons we conclude that a *prima facie* case of obviousness of the appellant's claimed invention has been established and has not been effectively rebutted

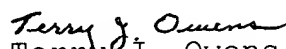
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by the appellant. Accordingly, we affirm the examiner's rejection under 35 U.S.C. §103.


DECISION

The rejection of claim 50 under 35 U.S.C. §103 over Campbell in view of Hubbard is affirmed.

AFFIRMED


Terry J. Owens)
Administrative Patent Judge)


Robert E. Nappi)
Administrative Patent Judge)


Anton W. Fetting)
Administrative Patent Judge)

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